

STAN F. WALISZEK

IBLA 80-631

Decided January 12, 1981

Appeal from the decision of the Eastern States Office, Bureau of Land Management, denying reinstatement of oil and gas lease ES 18872 Acquired.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

2. Oil and Gas Leases: Reinstatement

The burden of proving that reasonable diligence was exercised or the lack of diligence was justified rests on the lessee. Where a lessee states that he mailed the rental payment to the proper BLM office well in advance of the due date but presents no corroborating evidence of the attempted payment, an oil and gas lease reinstatement petition is properly denied.

APPEARANCES: Stan F. Waliszek, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Stan F. Waliszek has appealed the decision of the Eastern States Office, Bureau of Land Management (BLM), dated March 24, 1980, denying

reinstatement of oil and gas lease ES 18872. BLM issued the lease to appellant effective September 1, 1978, and appellant assigned the lease to Wilfred Plomis effective December 1, 1979. BLM thereafter found that its approval of the assignment was improper when it discovered that the receipt for the annual rental which was due on September 1, 1979, was dated September 20, 1979. Finding no evidence that the rental had been timely paid, BLM then sent a termination notice to Wilfred Plomis dated February 20, 1980, in accordance with 43 CFR 3108.2-1(c)(1). Appellant filed a timely petition for reinstatement as he was the lessee at the time that rental was due.

In his petition for reinstatement, appellant explained that he had mailed payment on July 18, 1979, from Fullerton, California. He supplied a sworn statement to that effect and a copy of his transmitting memorandum as evidence. He further stated that when, on September 18, 1980, he noted that he had not received a receipt for his payment, he asked Mr. Plomis to check the case file. When the file did not reflect payment, appellant directed Mr. Plomis to make a duplicate payment as it appeared that the original check was "lost/misplaced or the whereabouts unknown."

BLM denied the petition for reinstatement indicating that appellant had not supplied any evidence to corroborate his sworn statement and cited Emma Sabsevit, 35 IBLA 177 (1978).

In his statement of reasons appellant adds that he mailed his September payment in July to ensure that it would be timely received because the Eastern States Office was changing locations. He argues that the payment was lost during the confusion of moving the office and the changes in personnel of the accounts section at that time.

[1] An oil and gas lease terminated for failure to timely pay annual rental may be reinstated upon proof that the lessee exercised reasonable diligence in submitting the rental payment or that lack of diligence was justified. 30 U.S.C. § 188(c) (1976). In the absence of such proof a petition for reinstatement is properly denied. See Harold W. Fullerton, 46 IBLA 116 (1980); William A. Klug, 43 IBLA 255 (1979); James E. Kordosky, 43 IBLA 63 (1979).

[2] The burden of proving that failure to pay rentals on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence is the obligation of the lessee. Emma Sabsevit, *supra*; M. J. Harvey, Jr., 19 IBLA 230 (1975); 43 CFR 3108.2-1(c)(2). Where BLM never receives the rental payment, as in this case, and appellant suggests that it was lost either by BLM or in the mail, corroborative evidence of transmittal is properly required before reinstatement will be granted. Emma Sabsevit, *supra*. This

requirement for corroboration is necessitated by the Congressional admonition directed to the Department upon the adoption of the Act of May 20, 1970.

A reinstatement may be made by the Secretary only after he is fully satisfied that the mistake was justifiable or not due to a lack of reasonable diligence on the part of the lessee. The Committee expects the Secretary of the Interior to examine carefully each petition for reinstatement and to adjudicate favorably only those cases where it is clearly shown that the failure was, as indicated above, either justifiable or not due to a lack of reasonable diligence. [Emphasis supplied.]

H.R. Rep. No. 91-1005, reprinted in U.S. Code Cong. & Adm. News at 1453.

We recognize that situations will arise in which an individual will find it impossible to show the actual date of mailing and accordingly will not be afforded reinstatement of a terminated lease. Congress, however, in adopting the Act of May 12, 1970, recognized this likelihood in a different context, noting:

It is recognized that this 20-day limitation on reinstatements means that a small percentage of terminated leases, otherwise deserving, may not be reinstated under this legislation. However, in balancing the advantage of a more liberal relief provision against the committee's desire to reduce the incentive for "intentional" mistakes, the latter course was chosen. In the event truly deserving cases arise that cannot meet the 20-day provision recourse to private legislation may be necessary.

H.R. Rep. No. 91-1005, supra.

The corroboration requirement employed by this Board may, at times, result in the denial of reinstatement to otherwise deserving applicants. Such standards, however, are the prerequisites to this Board's compliance with the Congressional mandate that the Department adjudicate favorably only those cases where an individual can clearly bring himself within the parameters of the law. We find, therefore, that BLM properly denied reinstatement of appellant's oil and gas lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski

Administrative Judge

We concur:

Bruce R. Harris
Acting Administrative Judge

Douglas E. Henriques
Administrative Judge

